



## DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510-AB24

### Federal Government Participation in the Automated Clearing House

**AGENCY:** Bureau of the Fiscal Service, Treasury.

**ACTION:** Final rule; technical correction.

**SUMMARY:** This document corrects a technical error that appeared in the July 24, 2014 amendments to our regulation governing the use of the Automated Clearing House (ACH) network by Federal agencies.

**DATES:** This technical correction is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ian Macoy, Director, Settlement Services Division, at (202) 874-6835 or [ian.macoy@fiscal.treasury.gov](mailto:ian.macoy@fiscal.treasury.gov) or Natalie H. Diana, Senior Counsel, at (202) 874-6680 or [natalie.diana@fiscal.treasury.gov](mailto:natalie.diana@fiscal.treasury.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

On July 24, 2014, the Bureau of the Fiscal Service (Service) published a final rule in the Federal Register (*79 FR 42974*) to amend our regulation at 31 CFR Part 210 (Part 210) governing the use of the ACH network by Federal agencies. Among the revisions to Part 210

that were published in the final rule were several non-substantive changes to § 210.8(b) to reflect the re-numbering of the NACHA Rules and the updated citation to the Consumer Financial Protection Bureau's Regulation E. In revising § 210.8(b), subparagraphs (1) and (2) of paragraph (b) were inadvertently omitted due to a drafting error.

### **Description of Correction**

This action corrects the omission of paragraphs (b)(1) and (2) from § 210.8(b).

In the section-by-section analysis of the final rule preamble published on July 24, 2014, the Service stated that the changes to § 210.8 consisted of the replacement of specific ACH Rules references to reflect re-numbering of the ACH Rules and the updating of the regulatory citation to Regulation E to reflect its re-codification at 12 CFR Part 1005. There was no indication in the section-by-section analysis or discussion elsewhere in the preamble of the deletion of subparagraphs (1) and (2), which have no relation to the reasons for the technical revisions to § 210.8, *i.e.*, the re-numbering of the ACH Rules and the re-codification of Regulation E. Similarly, there was no proposal to make any substantive change to § 210.8 in the preamble or section-by-section analysis of the Service's notice of proposed rulemaking to amend Part 210, which was published on December 12, 2013 (78 FR 75528). Subparagraphs (1) and (2) were omitted by error from the final rule purely due to a drafting error in which the text of the subparagraphs was not included in the amendatory instructions to § 210.8(b).

### **Procedural Matters**

Section 553 of the Administrative Procedure Act (APA) (*5 U.S.C. 553(b)(3)(B)*) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, and provides a statement of the reasons for that finding, the agency may issue a final rule without providing notice and an opportunity for public

comment. The APA also generally requires that a final rule be effective no sooner than 30 days after the date of publication in the Federal Register. This 30-day delay in effective date can be waived, however, if an agency finds good cause why the effective date should not be delayed, and the agency incorporates a statement of the findings and its reasons in the rule issued.

The Service finds that there is good cause, and that it would be contrary to the public interest and unnecessary, to undertake notice and comment procedures to make this technical correction. As discussed above, the preamble and the section-by-section analysis to both the notice of proposed rulemaking and the final rule amendments correctly refer to and discuss the substance of the section affected by this technical correction. The Service is also waiving the 30-day delay in effective date for this correction. We believe that it is in the public interest to ensure that the correction be made as expeditiously as possible to avoid confusion. Therefore, we find that delaying the effective date of this correction would be contrary to the public interest and we find good cause to waive the 30-day delay in the effective date.

This document is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866, entitled Regulatory Planning and Review.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

#### **List of Subjects in 31 CFR Part 210**

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

### **Words of Issuance**

Accordingly, 31 CFR part 210 is corrected by making the following correcting amendments:

## **PART 210--FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE**

1. The authority citation for part 210 continues to read as follows:

**Authority:** 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

2. Amend § 210.8 by revising paragraph (b) to read as follows:

### **§ 210.8 Financial institutions.**

\* \* \* \* \*

(b) *Liability.* Notwithstanding ACH Rules Subsections 2.4.4, 2.8.4, 4.8.5, 2.9.2, 3.2.2, and 3.13.3, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section. A financial institution shall not be liable to any third party for any loss or damage resulting directly or indirectly from an agency's error or omission in originating an entry. Nothing in this section shall affect any obligation or liability of a financial institution under Regulation E, 12 CFR part 1005, or the Electronic Funds Transfer Act, 12 U.S.C. 1693 et seq.

(1) An ODFI that transmits a debit entry to an agency without the prior written or similarly authenticated authorization of the agency, shall be liable to the Federal Government for the amount of the transaction, plus interest. The Service may collect such funds using

procedures established in the applicable ACH Rules or by instructing a Federal Reserve Bank to debit the RDFI's account at the Federal Reserve Bank of the account of its designated correspondent. The interest charge shall be at a rate equal to the Federal funds rate plus two percent, and shall be assessed for each calendar day, from the day the Treasury General Account (TGA) was debited to the day the TGA is reccredited with the full amount due.

(2) An RDFI that accepts an authorization in violation of § 210.4(a) shall be liable to the Federal Government for all credits or debits made in reliance on the authorization. An RDFI that transmits to an agency an authorization containing an incorrect account number shall be liable to the Federal Government for any resulting loss, up to the amount of the payment(s) made on the basis of the incorrect number. If an agency determines, after appropriate investigation, that a loss has occurred because an RDFI transmitted an authorization or notification of change containing an incorrect account number, the agency may instruct the Service to direct a Federal Reserve Bank to debit the RDFI's account for the amount of the payment(s) made on the basis of the incorrect number. The agency shall notify the RDFI of the results of its investigation and provide the RDFI with a reasonable opportunity to respond before initiating such a debit.

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Dated: December 9, 2014

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Margaret Marquette  
Chief Counsel  
Bureau of the Fiscal Service

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